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Supreme Court
on
“Hindutva” & “Hinduism”
and
L.K. Advani's
Statement

A BJP PUBLICATION

Published by : Office Secretary, BJP (Central Office)
11, Ashok Road, New Delhi - 110 001



Price : 10/=

Printed by : Excelprint, Delhi-6.

PUBLISHER'S NOTE

Two Election Appeals came up before their Lordships of Supreme Court for disposal recently and the three judge bench of the Court headed by Justice J.S. Verma rendered a historic judgement. The meaning of Hindutva and Hinduism was considered in detail and the bench too, citing prior judgements of Supreme Court and parliamentary debates unambiguously made it clear that it is not to be equated with, or understood as religious Hindu fundamentalism.

Shri L.K. Advani, President of Bharatiya Janata Party commented on this verdict of Supreme Court at a Press Conference held in Delhi on 12-12-95.

A large number of workers and sympathisers of BJP approached us for a copy of the judgement and Shri Advani's statement. This booklet has been brought out just to meet this demand.

Trust this will be welcomed by all.

L.K. ADVANI'S

PRESS STATEMENT

The Supreme Court Judgement of yesterday upholding the election of Shri Manohar Joshi, Chief Minister of Maharashtra, Prof. Ramchandra Kapse, BJP MP, and Smt. Chandrakanta Goyal, BJP MLA of Maharashtra and absolving Shri Pramod Mahajan, MP of the charges of corrupt practice levelled against him, is a land-mark Judgement.

I feel extremely gratified about yesterday's verdict not only because it has reinforced the stability of Maharashtra Government or because it upholds the election of several eminent MPs and MLAs of ours but principally because the Constitution Bench has lent its seal of Judicial imprimatur to BJP's ideology of Hindutva.

We fully endorse what the Court has observed about religious bigotry. Bigotry is bad, whether it is religious, or linguistic or, for that matter, casteist. Section 123 of the R.P. Act is intended to deal with this malady.

The BJP has registered spectacular gains in the past few years. Its principal success, however, has been in making ideology relevant to electoral verdicts. The party has been crusading against Pseudo-secularism, and campaigning for its concept of cultural nationalism. Popular support for this concept has been growing by leaps and bounds.

BJP believes that India is one country and that Indians are one people. We hold that the basis of this unity is our ancient culture. For us, thus nationalism is not just a geographical or political concept; it is essentially a cultural concept. Whether you call it Hindutva or Bharatiyata or Indianess, the nomenclature does not matter; the content is the same.

It is noteworthy that as the BJP's appeal of Hindutva has been gaining ground, a vicious and well-orchestrated campaign of slander has been unleashed against us, that BJP has been promoting religious fundamentalism.

At one point of time, two years back, these adversaries of ours backed two official bills - the Constitution (80th Amendment)

Bill, 1993 and the Representation of the people (Amendment) Bill, 1993, which on the face of it purported to delink religion from politics, but which in effect aimed at extraditing the BJP from the electoral arena. Because of BJP's stout resistance, the Bills could not be passed.

But somehow during the past few years, our adversaries have succeeded in creating an impression that if any party or candidate talked about religion, temples, Hindutva, Hinduism etc., it was guilty of a corrupt practice under Section 123 of the Representation of people Act.

I am happy that the three- Judge Bench of the Supreme Court headed by Justice J.S. Verma in its cogently- argued verdict yesterday has cleared these cobwebs of confusion and obfuscation.

After citing extensively from Parliamentary debates and from the Court's own earlier interpretations of Hinduism, yesterday's judgement makes the following very pertinent observations:-

"These Constitution Bench decisions, after a detailed discussion, indicate that no precise meaning can be ascribed to the terms 'Hindu', 'Hindutva' and 'Hinduism'; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term 'Hindutva' is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term 'Hindutva' or 'Hinduism' per-se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or be construed to fall within the prohibition in sub-sections (3) and/or (3A) of Section 123 of the R.P. Act."

* * * *

"Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism."

* * * *

"Thus, it cannot be doubted, particularly in view of the Constitution Bench of this Court that the words 'Hinduism' or 'Hindutva' are not necessarily to be understood and construed narrowly, confined only to

the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting the way of life of the Indian people. Unless the context of a speech indicates a contrary meaning or use, in the abstract these terms are indicative more of a way of life of the Indian people and are not confined merely to describe persons practising the Hindu religion as a faith."

* * * *

"It is, therefore, a fallacy and an error of law to proceed on the assumption that any reference to Hindutva or Hinduism in a speech makes it automatically a speech based on the Hindu religion as opposed to the other religions or that the use of words 'Hindutva' or 'Hinduism' per-se depict an attitude hostile to all persons practising any religion other than the Hindu religion."

* * * *

"The fallacy is in the assumption that a speech in which reference is made to Hindutva or Hinduism must be a speech on the ground of Hindu religion so that if the candidate for whom the speech is made happens to be a Hindu, it must necessarily amount to a corrupt practice under sub-section (3) or sub-section (3A) of Section 123 of the R.P. Act. As indicated, there is no such presumption permissible in law contrary to the several Constitution Bench decisions referred herein."

Earlier this year a Judicial Tribunal had struck down the Government of India's order banning the Vishwa Hindu Parishad. The year is coming to a close with yet another judicial pronouncement which gives great satisfaction to us. Yesterday's judgement, we hold, is a vindication of the BJP's espousal of cultural nationalism.

New Delhi, 12-12-95

.....The term 'Hindu', according to Dr. Radhakrishnan, had originally a territorial and not a credal significance. It implied residence in a well-defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different gods, and practiced different rites (Kurma Purana) (Ibid p. 12).

Monier Williams has observed that "it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Ganges, swollen by a continual influx of tributary rivers and increasing area of country and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes... The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds". ("Religious Thought & Life in India" by Monier Williams, p. 57).

We have already indicated that the usual tests which can be applied in relation to any recognised religion or religious creed in the world turn out to be inadequate in dealing with the problem of Hindu religion. Normally, any recognised religion or religious creed subscribes to a body of set philosophic concepts and theological beliefs. Does this test apply to the Hindu religion? In answering this question, we would base ourselves mainly on the exposition of the problem by Dr. Radhakrishnan in his work on Indian philosophy. ("Indian Philosophy" by Dr. Radhakrishnan, Vol. I, pp. 22.23). Unlike other countries, India can claim that philosophy in ancient India was not an auxiliary to any other science or art, but always held a prominent

position of independence... "In all the fleeting centuries of history", says Dr. Radhakrishnan, "In all the vicissitudes through which India has passed, a certain marked identity is visible. It has held fast to certain psychological traits which constitute its special heritage, and they will be the characteristic marks of the Indian people so long as they are privileged to have a separate existence". The history of Indian thought emphatically brings out the fact that the development of Hindu religion has always been inspired by an endless quest of the mind for truth based on the consciousness that truth has many facets. Truth is one, but wise men describe it differently. (...) The Indian mind has, consistently through the ages, been exercised over the problem of the nature of godhead the problem that faces the spirit at the end of life, and the interrelation between the individual and the universal soul. "If we can abstract from the variety of opinion", says Dr. Radhakrishnan, "and observe the general spirit of Indian thought, we shall find that it has a disposition to interpret life and nature in the way of monistic idealism, though this tendency is so plastic, living and manifold that it takes many forms and expresses itself in even mutually hostile teachings". (...)

..... Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cut and blind alleys are somehow reconciled with the main road of advance to the truth." (...) when we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such.

* * * *

The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought

and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dhyaneshwar and Tukaram initiated the Varakari cult; Guru Nank inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.

* * * *

..... It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary" ("The Present-Day Experiment in Western Civilisation" by Toynbee, pp. 48-49).

The Constitution-makers were fully conscious of this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Art. 25 has made it clear that in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

(emphasis supplied)

(from pages 259-266)

In a later Constitution Bench decision in Commr. of Wealth Tax, Madras & Ors. Vs. Late R. Sridharan by L. Rs., (1976) Supp. SCR 478, the meaning of the term "Hinduism" as commonly understood is stated thus:-

".... It is a matter of common knowledge, that Hinduism embraces within self so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term 'Hindu' with precision.

The historical and etymological genesis of the word "Hindu" has been succinctly explained by Gajendragadkar, C.J. in Shastri Yaganpurshdasji & Ors. v Muldas Bhundardas Vaishya & Anr. (A.I.R. 1966 S.C. 1119).

The Unabridged Edition of Webster's Third New International Dictionary of the English language, the term 'Hinduism' has been defined as meaning a complex body of social, cultural and religious beliefs and practices evolved in largely confined to the Indian subcontinent and marked by a caste system, an outlook tending to view all forms and theories as aspects of one eternal being and truth, a belief in ahimsa, karma, dharma, sansara and moksha, and the practice of the way of works, the way of knowledge, or the way of devotion as the means of release from the bound of rebirths; the way of life and form of "thought of a Hindu".

In Encyclopedia Britannica (15th Edition), the term 'Hinduism' has been defined as meaning "the civilization of Hindus (originally, the inhabitants of the land of the Indus River). It properly denotes the Indian civilization of approximately the last 2,000 years, which gradually evolved from Vedism, the religion of the ancient Indo-European who settled in India in the last centuries of the 2nd millennium BC. Because it integrates a large variety of heterogeneous elements, Hinduism constitutes a very complex but largely continuous whole, and since it covers the whole of life, it has religious, social, economic, literary, and artistic aspects. As a religion, Hinduism is an utterly diverse conglomerate of doctrines, cults, and way of life... In principle, Hinduism incorporates all forms of belief and worship without necessitating the selection or elimination of any. The Hindu is inclined to revere the divine in every

manifestation, whatever it may be, and is doctrinally tolerant, leaving others - including both Hindus and non-Hindus - whatever creed and worship practices suit them best. A Hindu may embrace a non-Hindu religion without ceasing to be a Hindu, and since the Hindu is disposed to think synthetically and to regard other forms of worship, strange gods, and divergent doctrines as inadequate rather than wrong or objectionable, he tends to believe that the highest divine powers complement each other for the well-being of the world and mankind. Few religious ideas are considered to be finally irreconcilable. The core of religion does not even depend on the existence or non-existence of God or on whether there is one god or many. Since religious truth is said to transcend all verbal definition, it is not conceived in dogmatic terms. Hinduism is, then both a civilization and a conglomerate of religions, with neither a beginning, a founder, nor a central authority, hierarchy, or organization. Every attempt at a specific definition of Hindu has proved unsatisfactory in one way or other the more so because the finest Indian Scholars of Hinduism, including Hindus themselves, have emphasized different aspects of the whole.

In his celebrated treatise "Gitarahasaya", B.G. Tilak has given the following broad description of the Hindu religion:-

"Acceptance of the Vedas with reverence; recognition of the fact that the means or ways of salvation are diverse; and realization of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion".

In Bhagwan Koer v. J.C. Bose & Ors., (1904 ILR 31 Cal. 11), it was held that Hindu religion is marvellously catholic and elastic. Its theology is marked by eclecticism and tolerance and almost unlimited freedom of private worship....

This being the scope and nature of the religion, it is not strange that it holds within its fold men of divergent views and traditions which have very little in common except a vague faith in what may be called the fundamentals of the Hindu religion."

(emphasis supplied)

(at pages 481-482)

These Constitution Bench decisions, after a detailed discussion, indicate that no precise meaning can be ascribed to the terms 'Hindu', 'Hindutva' and 'Hinduism'; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term 'Hindutva' is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term 'Hindutva' or 'Hinduism' per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or be construed to fall within the prohibition in sub-sections (3) and/or (3A) of Section 123 of the R.P. Act.

Bharucha, J. In Dr. M. Ismail Faruqui and Ors. etc. etc. vs Union of India & Ors. etc., 1994 (6) SCC 360, (Ayodhya case), in the separate opinion for himself and Ahmadi, J. (as he then was), observed as under :

"... Hinduism is a tolerant faith. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land..."

(at page 442)

Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as religious Hindu fundamentalism. In "Indian Muslims 'The Need For A Positive Outlook'" by Maulana Wahiduddin Khan, (1994), it is said :

"The strategy worked out to solve the minorities problem was, although differently worded that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all of the cultures coexisting in the country. This was felt to be the way to communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem."

(at page 19)

The above opinion indicates that the word 'Hindutva' is used and understood as a synonym of 'Indianisation', i.e., development of uniform culture by obliterating the differences between all the cultures co-existing in the country.

In Kultar Singh vs. Mukhtiar Singh, 1964 (7) SCR 790, the Constitution Bench construed the meaning of sub-section (3) of Section 123 prior to its amendment. The question there was whether a poster contained an appeal to voters to vote for the candidate on the ground of his religion; and the meaning of the word 'Panth' in the poster was significant for the purpose. It was held as under :-

"It is true that a corrupt practice under s. 123(3) can be committed by a candidate by appealing to the voters to vote for him on the ground of his religion even though his rival candidate may belong to the same religion. If, for instance, a Sikh candidate were to appeal to the voters to vote for him, because he was a Sikh and add that his rival candidate, though a Sikh in name, was not true to the religious tenets of Sikhism or was a heartless and as such, outside the pale of the Sikh religion, that would amount to a corrupt practice under s. 123(3), and so, we cannot uphold the contention that s. 123(3) is inapplicable because both the appellant and the respondent are Sikhs...

The corrupt practice as prescribed by s. 123(3) undoubtedly constitutes a very healthy and salutary provision which is intended to serve the cause of secular democracy in this country. In order that the democratic process should thrive and succeed, it is of utmost importance that our elections to Parliament and the different legislative bodies must be free from the unhealthy influence of appeals to religion, race, caste, community, or language. If these considerations are allowed any sway in election campaigns, they would vitiate the secular atmosphere of democratic life, and so, s. 123(3) wisely provides a check on this undesirable development by providing that an appeal to any of these factors made in furtherance of the candidature of any candidate as therein prescribed would constitute a corrupt practice and would render the election of the said candidate void.

In considering the question as to whether the distribution of the impugned poster by the appellant constitutes corrupt practice under s. 123(3), there is one point which has to be borne in mind. The appellant had been adopted as its candidate by the Akali Dal Party. This Party is recognised as a political party by the

Election Commission notwithstanding the fact that all of its members are only Sikhs. It is well-known that there are several parties in this country which subscribe to different political and economic ideologies, but the membership of them is either confined to, or predominantly held by, members of particular communities or religions. So long as law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by candidates of such parties for votes may, if successful, lead to their election and in an indirect way, may conceivably be influenced by consideration of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion. That is why we think, in considering the question as to whether a particular appeal made by a candidate falls within the mischief of s. 123(3), courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction.

That takes us to the question of construing the impugned poster. The principles which have to be applied in construing such a document are well-settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated languages, or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at elections meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or

pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches. It is in the light of these well-established principles that we must now turn to the impugned pamphlet."

(emphasis supplied)
(at pages 793-795)

The test applied in the decision was to construe the meaning of the word 'Panth' not in the abstract but in the context of its use. The conclusion reached was that the word 'Panth' used in the poster did not mean Sikh religion and, therefore, the appeal to the voters was not to vote for the candidate because of his religion. Referring to an earlier decision in *Jagdev Singh Sidhanti vs. Pratap Singh Daulta and Ors.*, 1964 (6) SCR 750, it was reiterated as under:-

"..... Political issues which form the subject-matter of controversies at election meetings may indirectly 'and incidentally introduce considerations of language or religion, but in deciding the question as to whether corrupt practice has been committed under s. 123 (3), care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy....."

(at page 799)

Thus, it cannot be doubted, particularly in view of the Constitution Bench decisions of this Court that the words 'Hinduism' are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious practices unrelated to the culture and ethos of the people of India, depicting the way of life of the Indian people. Unless the context of a speech indicates a contrary meaning or use, in the abstract these terms are indicative more of a way of life of the Indian people and are not confined merely to describe persons practising the Hindu religion as a faith.

Considering the terms 'Hinduism' or 'Hindutva' per se as depicting hostility, enmity or intolerance towards other religious faiths or professing communalism, proceeds from an improper appreciation and perception of the true meaning of these expressions emerging from the detailed discussion in earlier authorities of this Court. Misuse of these expressions to promote communalism cannot alter the true meaning of these terms. The mischief resulting from the misuse of the terms by anyone in his speech has to be checked and not its permissible use. It

is indeed very unfortunate, if in spite of the liberal and tolerant features of 'Hinduism' recognised in judicial decisions, these terms are misused by anyone during the elections to gain any unfair political advantage. Fundamentalism of any colour or kind must be curbed with a heavy hand to preserve and promote the secular creed of the nation. Any misuse of these terms must, therefore, be dealt with strictly.

It is, therefore, a fallacy and an error of law to proceed on the assumption that any reference to Hindutva or Hinduism in a speech makes it automatically a speech based on the Hindu religion as opposed to the other religions or that the use of words 'Hindutva' or 'Hinduism' per se depict an attitude hostile to all persons practising any religion other than the Hindu religion. It is the kind of use made of these words and the meaning sought to be conveyed in the speech which has to be seen and unless such a construction leads to the conclusion on that these words were used to appeal for votes for a Hindu candidate on the ground that he is a Hindu or not to vote for a candidate because he is not a Hindu, the mere fact that these words are used in the speech would not bring it within the prohibition of sub-section (3) or (3A) of Section 123. It may well be, that these words are used in a speech to promote secularism or to emphasise the way of life of the Indian people and the Indian culture or ethos, or to criticise the policy of any political party as discriminatory or intolerant. The parliamentary debates, including the clarifications made by the Law Minister quoted earlier, also bring out this difference between the prohibited and permissible speech in this context. Whether a particular speech in which reference is made to Hindutva and/or Hinduism falls within the prohibition under sub-section (3) or (3A) of Section 123 is, therefore, a question of fact in each case.

This is the correct premise in our view on which all such matters are to be examined. The fallacy is in the assumption that a speech in which reference is made to Hindutva or Hinduism must be a speech on the ground of Hindu religion so that if the candidate for whom the speech is made happens to be a Hindu, it must necessarily amount to a corrupt practice under sub-section (3) and or sub-section (3A) of section 123 of the R.P. Act. As indicated, there is no such presumption permissible in law contrary to the several Constitution Bench decisions referred herein.

Supreme Court Judgement
11-12-1995

